

21-8056 ORIGINAL

FILED
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OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

EARL LEE KING — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF CRIMINAL APPEALS OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EARL LEE KING #2009392
(Your Name)

LEBLANC UNIT- 3695 FM 3514
(Address)

BEAUMONT, TX 77705
(City, State, Zip Code)

409-724-1515
(Phone Number)

QUESTION(S) PRESENTED

Has the action by the Court of Criminal Appeals of Texas in dismissing Petitioner's State Application for a Writ of Habeas Corpus violated Article I, Section 9, clause 2, of the United States Constitution, where doing so has effectively denied him the right to seek habeas relief?

Where he had presented evidence of newly discovered facts that met the requirements of Article 11.07, § 4(a) of the Texas Code of Criminal Procedure, and McQuiggen v. Perkins, 569 U.S. 383 (2013), has the Court of Criminal Appeals action violated Federal law as established by the Supreme Court of the United States, by determining it did not qualify as "newly discovered evidence."

Does petitioner's "newly discovered facts" meet the requirements of Article 11.07 § 4 (a) and (c) of the Texas Code of Criminal Procedure and McQuiggen v. Perkins?"

Is the actions of the State courts a "state created impediment" preventing petitioner from seeking habeas relief in the State and Federal Courts?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

King v. Davis, No. 5:18-CV-0085 (E.D.Tex.)

King v. Davis, No. 19-40795 (5th Cir.)

In re: Earl King, No. 21-40374 (5th Cir.)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A Dismissal From Court of Criminal Appeals of Texas

APPENDIX B Order Recommending Dismissal From District Court
of Bowie County, Texas

APPENDIX C Application For Habeas Corpus Under Article
11.07 - Texas Code of Criminal Procedure

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Brady v. Maryland, 373 U.S. 83 (1963)	passim
Hamdi v. Rumsfeld, 542 U.S. 507 (2004)	6
Marbury v. Madison, 5 U.S. 137 (1803)	7
Martinez v. Ryan, 566 U.S. 1 (2012)	6
McCulloch v. Maryland, 17 U.S. 316 (1819)	7
McQuiggan v. Perkins, 569 U.S. 383 (2013)	passim
Trevino v. Thaler, 569 U.S. 413 (2013)	6

STATUTES AND RULES

TEX CODE CRIM. PROC. ART. 11.07

§ 4(a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application ... unless ...

(1) the current claims and issues ... was unavailable on the date the applicant filed the previous application; or

(2) by a preponderance of the evidence, but for a violation of the United States Constitution, no rational juror could have found the applicant guilty beyond a reasonable doubt,

OTHER

United States Constitution Article 1, Section 9, clause 2.

The privilege of the Writ of Habeas Corpus shall not be suspended....

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the 202nd District Court - Bowie County Texas court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
_____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.
_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 2-23-22.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date:
_____, and a copy of the order denying rehearing appears at Appendix _____.
_____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.
_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. Art. 1, Sec. 9, cl. 2:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

STATEMENT OF THE CASE

Petitioner is a Texas state prisoner who is confined for the offenses of aggravated sexual abuse of a child and indecency with a child by contact. In both cases he had been compelled to plead guilty and now seeks habeas relief on the basis of his actual innocence.

In March of 2021, Petitioner had received a letter from a former girlfriend in which he had first learned that the complaining witness for the cases in which he had been convicted had adamantly refused to testify, as had her mother, because the district attorney had wanted them to testify giving facts and statements that were false. So, in order to not being forced to testify, they left the state of Texas and moved to California. Petitioner first learned of this in the March 2021 letter.

Petitioner filed a second state habeas application under Article 11.07 §4(a), on the basis of a violation under Brady v. Maryland, where the withheld fact that the state now had NO evidence or witnesses, had it been known by the defense, would have been grounds to seek dismissal, or a directed verdict at trial.

The State habeas court dismissed the application asserting that Petitioner's newly discovered facts did not meet the requirements for "newly discovered evidence" under Article 11.07 §4(a),

Petitioner asserts that the State courts' actions abrogates, and is contrary to, Article 1, Sec 9, cl. 2 of the U.S. Constitution, and constitutes a "state created impediment."

REASONS FOR GRANTING THE PETITION

While there is no Texas statute that suspends the privilege of the Writ of habeas corpus out-right, Article 11.07, § 4(a) of the Texas Code of Criminal Procedure does so by operation and judicial fiat. Surely, it was not intended by the Framers of our Constitution that the Writ of Habeas Corpus could be effectively suspended on a case-by-case basis, based entirely on a judge's subjective belief.

In United States law, habeas corpus is a recourse that gives a person the ability to challenge the reasons for his confinement under color of law. The petition for habeas corpus is filed with a court that has jurisdiction over the custodian, and if granted, a writ is issued directing the custodian to bring the confined person before the court for an examination of the merits of a person's claims. The Suspension Clause of the United States Constitution specifically included the English Common Law procedure in Article I, Section 9, clause 2, which demands that "The privilege of the writ of habeas corpus shall not be suspended..."

United States law affords persons the right to petition for a writ of habeas corpus. This constitutional provision has been extended to the states courts where each state's court system is to review the legality of a conviction pursuant to both, the United States Constitution and the state's own constitution and laws.

Federal habeas review of state convictions did not extend to those in state custody until almost a century after the nation was founded. The Reconstruction Act extended the right of habeas

corpus to those in the custody of a state to all persons that were imprisoned on American soil. The Federal Habeas Statute that resulted is found at 28 U.S.C. §2241, albeit, with many substantial amendments.

In Hamdi v. Rumsfeld, 542 U.S. 507 (2004), the Supreme Court reconfirmed the right of every American citizen to having access to a FULL review of their claims through habeas corpus. Since 2004, the Supreme Court has repeatedly held that the right of habeas corpus is NOT to be suspended, abrogated, taken away, or interfered with in any way. See, e.g., Trevino v. Thaler, 569 U.S. 413 (2013); Martinez v. Ryan, 566 U.S. 1 (2012) (a state or court should not impose procedural hurdles that operate to prevent a petitioner for obtaining habeas relief.).

In this case the petitioner learned from his former girl friend that his ex-wife, who is the mother of the state's only witness, had refused to allow her daughter to testify against the petitioner, and would not do as the district attorney had asked - that she force her daughter to testify against her will, and giving untrue statements, so that she and her daughter would not be made to testify, Petitioner's ex-wife, taking her daughter with her, left Texas and moved to California. The State delayed the case for almost four years as it had no evidence or a

witness. This information was withheld and concealed from Petitioner's attorney, if known, counsel would have moved for dismissal or sought a directed verdict at trial.

In Texas courts, the judges and district attorneys have a very close working relationship — so much so that judges tend to forget that they are supposed to be impartial — believing that the court and prosecutor are on the same side. In the instant case, the trial judge, recognizing the egregious conduct of the prosecutor, chose to apply a statute in an unconstitutional manner to prevent the misconduct from coming to light. A statute must be found unconstitutional where it is capable of being applied unconstitutionally to others.

"It is explicitly the province and duty of the judiciary to say what the law is" the Supreme Court held in Marbury v. Madison, 5 U.S. 137 (1803). This decision gave the courts the ability to strike down laws on grounds that they are unconstitutional.

The United States Constitution guarantees the right to obtain habeas relief where entitled, and a state law or procedural provision impeding that right should be invalidated. Under the constitutional principles of implied powers and federal supremacy, United States law trumps state law. McCulloch v. Maryland, 17 U.S. 316 (1819),

The legal issues present in this case are strikingly similar to McQuiggen v. Perkins, where Perkins had obtained information that called his conviction into question. The Court determined that the information Perkins obtained did indeed meet the requirements of being "newly discovered" or "newly available" evidence entitling him to submit a subsequent petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Earl L. King

Date: 5-21-22